



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2004

Ms. Anita Stevenson
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-8845

OR2004-7908

Dear Ms. Stevenson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 208164.

The City of Austin (the "city") received requests from two requestors for (1) all records pertaining to administrative investigations of fire fighters of the city's fire department (the "department") for verbal and physical altercations, including insubordination, assault, making terroristic threats, deadly conduct, harassment, and sexual harassment, (2) e-mail correspondence between two named individuals, (3) all records pertaining to administrative investigation procedures or protocol for the department, (4) information concerning a particular grievance, and (5) all investigatory material pertaining to disciplinary actions taken against a named individual. You state you have released and will release some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.117, 552.1175, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that the submitted information includes an arrest warrant and arrest warrant affidavit. Article 15.26 of the Code of Criminal Procedure states the following:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Based on this provisions, the submitted arrest warrant and arrest warrant affidavit are deemed public. Exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as article 15.26 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the arrest warrant and arrest warrant affidavits must be released.

We also note that some of the submitted information is subject to section 552.022 of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or expressly confidential under other law. The information in the "Group 1 Records" and the "Group 2 Records" consists of completed internal affairs investigations conducted by or for the department. Sections 552.103 and 552.107 are discretionary exceptions under the Act and do not constitute "other law" for purposes of section 552.022; therefore, none of the information in the "Group 1 Records" or "Group 2 Records" is excepted under those sections. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 630 at 4 (1994) (governmental body may waive attorney-client privilege under section 552.107); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). However, because sections 552.101, 552.117, 552.130, and 552.137 of the Government Code and the Texas Rules of Evidence are "other law" for purposes of section 552.022, we will address these provisions. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will also address your claim under section 552.108 for a portion of the "Group 2 Records."

You assert the remaining information at issue in the "Group 1 Records," some of the "Group 2 Records," and the "Group 4 Records" is excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by section 143.089 of the Local Government Code. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a fire fighter's civil service file that the civil service director is required to maintain, and an internal file that the department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases

in which a fire department investigates a fire fighter's misconduct and takes disciplinary action against the fire fighter, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the fire fighter's civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a fire fighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to a fire fighter's alleged misconduct may not be placed in the fire fighter's civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a fire fighter's employment relationship with the department and that is maintained in a department internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that some of the information in the “Group 2 Records” and all the information in the “Group 4 Records” is maintained in the department's internal file pursuant to section 143.089(g) because the complaints did not result in disciplinary action. We therefore conclude that this information, which we have marked, is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

With regard to the requests for information made to the department, you assert that the information in the “Group 1 Records” is confidential under section 143.089(g). Therefore, based on this assertion, we conclude that, in response to the requests made to the department, the department must withhold this information pursuant to section 552.101 in conjunction with section 143.089(g) of the Government Code. With regard to the request for information made to the city, you also assert that this information is confidential under section 143.089(g). However, you indicate that this information relates to misconduct that resulted in a disciplinary action against a department employee, and you inform us that the employee is now appealing that disciplinary action. Although you contend that this information must be maintained only in the department's confidential internal personnel file created under section 143.089(g) because of the pending appeal, we note that a fire fighter's civil service file must contain documents relating to any misconduct in those cases where the department took disciplinary action against the fire fighter. *See* Local Gov't Code

§ 143.089(a)(2); *see also* Local Gov't Code §§ 143.051-143.055 (describing "disciplinary action" for purposes of section 143.089(a)(2)); Attorney General Opinion JC-0257 (2000). We note section 143.089(c) provides that information that must be placed in a civil service file under section 143.089(a)(2) may be removed if the civil service commission determines that (1) the disciplinary action was taken without just cause or (2) the charge of misconduct was not supported by sufficient evidence. *See* Local Gov't Code § 143.089(c). Section 143.089(c) therefore signifies that complaint files resulting in disciplinary action must be placed in the civil service file during the pendency of the appeal. The information at issue relates to the misconduct that resulted in disciplinary action against the fire fighter. Therefore, this information must be maintained in the civil service file pursuant to section 143.089(a)(2), and thus it may not be withheld in response to the request for information made to the city under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides in relevant part as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

The remaining information contains fingerprints. It does not appear to this office that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the city must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses information made confidential under federal law. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Therefore, you must withhold any CHRI in the remaining information that falls within the ambit of these state and federal regulations.

Section 552.101 also encompasses common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information

relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

In addition, in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

The "Group 2 Records" contains an investigation of sexual harassment, including an adequate summary of the investigation and the statements of the person accused of sexual harassment. The summary and statements of the person accused of harassment are not confidential and must be released; however, information within those documents identifying the alleged victims and witnesses is confidential. *See id.* at 525. We agree that the information you have marked in the summary and statements, as well as the information we have marked, is confidential under common law privacy and excepted from release under section 552.101. Because there is an adequate investigation summary, the remaining information in the investigation file must also be withheld under section 552.101 in conjunction with common law privacy. *See id.* The remaining documents not related to the harassment investigation also contain information that is confidential under common law privacy. This information, which we have marked, is excepted from release under section 552.101.

Texas Rule of Evidence 503(b)(1) provides the following:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. Tex. R. Evid. 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication, (2) identify the parties involved in the communication, and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 4527 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information). You assert that some of the submitted information constitutes communications that were made between city attorneys and city representatives to facilitate the rendition of professional legal services. Based on this representation, we conclude that the communications that we have marked are privileged, and you may withhold them pursuant to Texas Rule of Evidence 503.

You also assert that some of the remaining information is excepted from release under section 552.103 of the Government Code. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

Civil service appeals are governed by chapter 143 of the Local Government Code. *See* Local Gov't Code § 143.057. Such appeal proceedings constitute litigation for purposes of section 552.103. You assert that the information in the "Group 3 Records" relates to a pending civil service appeal. Based on this assertion, we agree that litigation involving the city as a party was pending on the date that the city received these requests for information. However, after review of your arguments and the information at issue, we conclude that you not established that this information is related to that litigation; therefore, the information in the "Group 3 Records" is not excepted from release under section 552.103.

You also assert the information within the "Group 1 Records" that you have marked "552.108" is excepted from release under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You acknowledge that the information at issue pertains to an internal administrative investigation that was conducted by the department. We note that section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). In this instance, however, you indicate that the information at issue relates to a pending case being investigated by the city's police department. Based on your representations and our review of the information at issue, we agree that the release of this information would interfere with the detection, investigation, or prosecution of crime. Accordingly, the city may withhold this information pursuant to section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

You assert some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received by a governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received by the city. For those employees who timely elected to keep their personal information confidential, the city must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The city may not withhold this information under section 552.117(a)(1) for those employees who did not make a timely election to keep the information confidential. We have marked this information accordingly.

The remaining information also contains information that is excepted from disclosure under section 552.117(a)(2). Section 552.117(a)(2) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of peace officers as defined by article 2.12 of the Code of Criminal Procedure regardless of whether they comply with section 552.024. Thus, the city must withhold the officers' home addresses and telephone numbers, social security numbers, and family member information under section 552.117(a)(2). We have marked this information accordingly.

If a social security number in the information at issue is not excepted under section 552.117, it may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under

section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

The remaining information contains Texas motor vehicle information. Section 552.130 of the Government Code provides in relevant part the following:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the motor vehicle information we have marked under section 552.130.

The remaining information also contains an e-mail address. Section 552.137 of the Government Code provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
 - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
 - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
 - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.
- (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. You must, therefore, withhold the e-mail address that we have marked under section 552.137.

Finally, we note that some of the submitted information is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.² *See* Open Records Decision No. 550 (1990).

To conclude, the arrest warrant and arrest warrant affidavit must be released pursuant to article 15.26 of the Code of Criminal Procedure. In regard to the requests made to the department, (1) the remaining information in the "Group 1 Records," the marked information in the "Group 2 Records," and the information in the "Group 4 Records" are confidential

²Because our ruling is dispositive, we do not address any of the remaining arguments.

under section 143.089(g) of the Government Code, and excepted from release under section 552.101 of the Government Code, (2) the fingerprints are confidential under chapter 560 of the Government Code, and excepted from release under section 552.101 of the Government Code, (3) any CHRI in the remaining information is confidential under chapter 411 of the Government Code and federal law and excepted from release under section 552.101 of the Government Code, (4) the marked information that is confidential under common law privacy is excepted from release under section 552.101 of the Government Code, (5) the marked section 552.117 information is excepted from release if the employees timely elected to keep their personal information confidential, (6) social security numbers may be confidential under federal law, (7) the Texas motor vehicle information is excepted under section 552.130, (8) the marked e-mail address is excepted under section 552.137, and (9) the remaining requested information must be released, but the information that is copyrighted may be released only in compliance with copyright law. In regard to the request made to the city, (1) the marked information that is confidential under common law privacy is excepted from release under section 552.101 of the Government Code, (2) the marked attorney-client communications may be withheld under Texas Rule of Evidence 503, (3) the information you have marked "552.108" is excepted from release under section 552.108(a)(1), (4) the marked section 552.117 information is excepted from release if the employees timely elected to keep their personal information confidential, (5) social security numbers may be confidential under federal law, (6) the Texas motor vehicle information is excepted under section 552.130, and (7) the remaining requested information must be released, but the information that is copyrighted may be released only in compliance with copyright law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

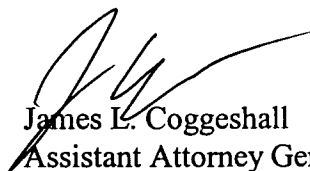
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 208164

Enc. Submitted documents

c: Ms. Becky Brooks
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